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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 614

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, INTERNATIONAL, *Petitioner*,

v.

NATIONAL MEDIATION BOARD; FRANCIS A. O'NEILL, JR., individually and as Chairman of the National Mediation Board; ROBERT O. BOYD, individually and as Member of the National Mediation Board; LEVERETT EDWARDS, individually and as Member of the National Mediation Board; AIR LINE PILOTS ASSOCIATION, INTERNATIONAL; UNITED AIR LINES, INC.; and BRANIFF INTERNATIONAL AIRWAYS, *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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CLARIFICATION OF QUESTIONS PRESENTED

The three briefs in opposition to the petition for a writ of certiorari which have been filed in this case, each offers it own distinct version of the questions presented without however arguing that the questions stated in the petition are not presented.

The three restatements of the questions presented, each materially different from the others, all attempt to obscure the presence here of the question of whether the National Mediation Board or the courts below may properly resolve factual disputes without affording any form of hearing of any kind at any time in this case or any other case with respect to the disputed facts. The Board's brief (p. 11) admits that "the Board found as a fact that ALPA is not composed of persons who stand in the relation of the carrier or its officers to stewards and stewardesses." This statement in the Board's brief in opposition is the first time the Board has admitted that it found as a fact that pilots do not represent management to stewardesses. As we pointed out in our petition for a writ of certiorari (p. 5), the Board in denying ALSSA a hearing (J.A. 97-98), did not make it clear and at no other time had made it clear whether it was taking the position factually that pilots do not supervise stewardesses on behalf of management or legally that such supervision on behalf of management was irrelevant under the Railway Labor Act. Each the brief in opposition filed by United Air Lines, Inc. (p. 2) and the brief in opposition filed by the Air Line Pilots Association (p. 2), proceed on the assumption of a legal ruling only and make the question one of whether a "formal hearing" is required before the National Mediation Board can make a legal interpretation of the Railway Labor Act.

As we set forth more fully in our petition for a writ of certiorari (pp. 10-11), there can be no doubt but what the court below avoided the jurisdictional issue by assuming the facts with respect to the managerial and supervisory status of the pilots in relation to stewardesses to be other than the petitioner at all stages of the proceedings alleged and offered to prove (J.A. 3, 5, 7,

86-87, 92-93, 103, 108-109, 337). Accordingly, the petition stated as the first question, the constitutional issue of whether due process of law was denied petitioner when the court below made an adverse factual ruling, dispositive of the case, although petitioner was never afforded a hearing as to the facts before either the Board or any court.

While the Board's restatement of the "Questions Presented" (Bd. Br., p. 2) concedes the presence of a question as to whether "a hearing" is required, the briefs in opposition filed by each United (p. 2) and the Pilots (p. 2), by qualifying the word "hearing" with the word "formal" apparently maintain that some kind of a hearing was held, though not a "formal" one. The court below did not base its decision on any such ground, squarely holding that no hearing is required (p. 5a of Appendix C to the Petition). Indeed, at no time prior to the filing of the briefs in opposition in this Court has it ever been as much as suggested that the Board accorded any kind of a hearing.

The proceedings before the Board in each the Braniff and United Case consisted of: the filing by the Air Line Pilots Association of an application for investigation of a representation dispute; the notification by the Board dated January 25, 1961, to the president of petitioner as the incumbent representative, of the filing of the application together with an invitation "to submit any statement he may care to make with respect to the application" (J.A. 13, 14); the submission by the petitioner on January 30, 1961 of a statement to the Board in the form of a letter (J.A. 85-90, 91-96) setting forth petitioner's position that the Air Line Pilots Association is composed entirely of persons who stand in the relationship of management to stewardesses, listing the factual and legal basis for that

position, including the applicable Civil Air Regulations (14 C.F.R. 40.351(e)) and interpretations (19 C.F.R. 1758) giving pilots complete "command" of the flight attendants with "full authority and control without limitation" (J.A. 86, 92), stating that the petitioner stands ready to introduce evidence in support of its position, and requesting a hearing (J.A. 90, 96); and the letter of the Board reciting its ruling on February 7, 1961 holding that nothing in the statute or Board policy bars the Air Line Pilots Association from representing stewardesses, denying a hearing and directing a mail ballot (J.A. 97-98, 98-99).

This letter of the Board is not consistent with the contention that the Board had given petitioner any hearing or considered any evidence. The letter on its face shows that the Board acted solely on the basis of the petitioner's letter of January 30, 1961. Thus the Board's letter mentions the Board's consideration of only one thing, the letter from petitioner requesting a hearing. The Board's letter starts off "Reference is made to your letter of January 30, 1961 * * * your letter was considered by the full membership of this Board in executive session February 7, 1961" (J.A. 97, 99). So far as we are aware, when the Board made this ruling on February 7, 1961, the Board did not have before it a single iota of proof, not even a claim from anyone, that "ALPA is not composed of persons who stand in the relation of the carrier or its officers to stewards and stewardesses," as we are now told the Board found as a fact (Bd. Br., p. 11).

Braniff has never at any time before the Board or in the courts denied the statements of petitioner (J.A. 3, 7-8, 86-87, 108-109, 118-119, 144, 174) that Braniff's pilots represent managament to the flight attendants, with pilots who are members of the Air Line Pilots

Association holding such positions in Braniff as "Vice-President Operations" and "Director of Flight Operations" (R. 103-104, 108, 118-119, 144), sitting on management committees that bargain as management representatives with representatives of flight attendants and pass on grievances of flight attendants and with all pilots having full power to remove flight attendants from duty, recommend their discharge or otherwise discipline flight attendants (J.A. 3, 7-8). Nor has there been any contention that the National Mediation Board had ever inquired into the relationship of pilots to flight attendants, in the course of its duties or otherwise, at any previous time in its history.

The Board in its brief in opposition here (p. 13) states that it has been the Board's long standing administrative practice to afford parties the opportunity to submit written proofs without holding a hearing and that this practice was approved by this Court in *Switchmen's Union v. National Mediation Board*, 320 U.S. 297, at 304. We have been unable to find any support for the assertion that the Board has any such practice or that it was approved by this Court in the cited case. The Board offers no support in its brief for this statement. The Board's publication of its rules and practices in the Code Federal Register contains no reference to such a practice (see Rules printed as Appendix A to this brief, pp. 20-21, *infra*). The *Switchmen's* case involved a traditional type hearing with the presentation of witnesses and other evidence at a public hearing before the Board itself (Record before this Court in No. 48, October Term, 1943, pp. 28-29, 76, 83; *New York Central R.R. Co.*, 1 N.M.B., 197, 198) and there was no issue raised before this Court as to the adequacy of that hearing. The Board has only made available to the public one volume of printed decisions,

that entitled "Determination of Craft or Class of the National Mediation Board, Vol. 1, January 31, 1935—June 30, 1948 (Gov't Print. Off. 1948). This volume contains repeated recitals of the holding of a public hearing to receive evidence before the entire Board itself (see e.g., p. 211) or before one Board member (see e.g. pp. 2, 10, 12, 16, 25, 28, 35, 40, 52, 59, 62, 68, 90, 111, 115, 130, 138; see specific reference to presentation of evidence through witnesses at pp. 90, 111, 115, 149, 167, 270, 277, 285, 388, 407, 480). We find no mention of the submission of proofs in written form, except in instances where the parties at the hearing stipulated to present certain matters by written statements.

And in the instant case there was never any indication given to the petitioner that it would be afforded any opportunity or expected to submit proof in written form. The only provision with respect to the method of offering proof to the Board which appears in the Board's Rules and Regulations by its terms applies to requests for hearings on the class or craft issue. This provision directs the party seeking a hearing to file a letter with the Board stating the request. The only Board Rules and Regulations with respect to submitting proof to the Board are the following (29 C.F.A. 1202.5, 1202.8):

> "§ 1202.5 *Rules to govern elections.* In the conduct of a representation election, the Board shall designate who may participate in the election, which may include a public hearing on craft or class, and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within 10 days designate the employees who may participate in the election.
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> * * * *

"§ 1202.8 *Hearings on craft or class.* In the event the contesting parties or organizations are unable to agree on the employees eligible to participate in the selection of representatives, and either party makes application by letter for a formal hearing before the Board to determine the dispute, the Board may in its discretion hold a public hearing, at which all parties interested may present their contentions and argument, and at which the carrier concerned is usually invited to present factual information. At the conclusion of such hearings the Board customarily invites all interested parties to submit briefs supporting their views, and after considering the evidence and briefs, the Board makes a determination or finding, specifying the craft or class of employees eligible to participate in the designation of representatives."

Admittedly these rules are not expressly applicable because in this case a hearing was requested in United entirely, and in Braniff in large measure, for issues other than craft or class. But these rules provided the only guide the Board has issued. Petitioner cannot constitutionally be deprived of a hearing on the theory it failed to follow a procedure entirely unknown to it.

The Board in its brief in opposition (p. 2), in its restatement of the question presented, injects the notion that the Board's failure to hold a hearing was justified because the Air Line Pilots Association would only be certified if it were "chosen" by a majority in the election. The Pilots in their brief in opposition (p. 2) similarly inject the fact that a majority of the flight attendants selected the Pilots in an election as properly an element of the issue whether a union of management representatives may properly be certified.

In understanding why this element of supposed choice is not properly an element in the questions pre-

sented, it should first be noted that the restatement of the questions by both the Pilots and United attempts to obscure the admitted fact that the Pilots' organization is composed entirely of persons having command authority over flight attendants both by law (J.A. 7, 86, 92, 14 C.F.R. 40.351(e); 19 C.F.R. 1758), by company regulations (J.A. 103, 346-347), and by agreement between the air lines and the Pilots (J.A. 103-104, 118-119) and that no flight attendant is eligible to membership in, and no flight attendant is now or ever has been a member of, the Air Line Pilots Association (J.A. 3, 85-86, 91-92, 176). The question is not whether, as United puts it (Br., p. 2), "a labor organization which represents air line pilots," or as Pilots put it (Br., p. 2) a union which "includes within its membership other crew members," can properly represent flight attendants. The question rather, as stated in the petition for a writ of certiorari (pp. 2-3), pertains to the representative capacity of "a union of pilots who have command authority over stewardesses and are management representatives and supervisors in their relationships with stewardesses."[1]

Turning now to the attempt to inject into the questions presented the element of choice of the flight

[1] With respect to the engineers whose presence in the Pilots organization has been repeatedly mentioned in the briefs in opposition (Bd. Br., p. 10, 22; United Br., p. 9; Pilots Br., p. 7), the record in the Engineers case showed that engineers regularly served as second officers and that except for 10 out of 668 flight engineers employed by United all flight engineers either possessed or were acquiring commercial pilots certificates, page 223 of the record in No. 531, October Term, 1961, *UNA Chapter, Flight Engineers' Inter. Ass'n* v. *National Mediation Board*, certiorari denied, 82 S. Ct. 394. The Braniff contract with the Pilots provides that the second officer shall be "third in command of the aircraft and has authority over other crew members" and shall hold a current commercial airman's certificate (J.A. 119).

attendants, this element is here immaterial if we are correct in our contention that as a matter of law and of fact the pilots are management representatives in their relationship with flight attendants. No collective bargaining is possible where management representatives sit on both sides of the table (see cases cited in footnotes 4 and 5, page 17 of our Petition in this case). Nor can the employees' vote be regarded as reflecting their free choice where the element of managerial coercion is present. In addition, the election conducted here was not secret. Petitioner requested a secret election conducted by the use of ballot boxes alleging that the sending of mail ballots to stewardesses afforded pilots full opportunity to take the ballots from the girls and mark and mail them (J.A. 9). The balloting on both Braniff and United was nevertheless conducted by mail ballots (J.A. 316-317, 332-333). The ballots on Braniff were mailed on February 16 returnable March 6 (J.A. 332-333). There was not even a direction to the person casting the ballot to "sign" any envelope or other form of identifying the voter but merely "to place your name and address" on the mailing envelope (J.A. 320, 333) and no signature list was provided which would make it possible to verify the voter's signature, but only a "list of eligible voters" (J.A. 330).

CLARIFICATION OF STATEMENT

The restatement of the case in the Board's brief in opposition is fair and accurate as far as it goes, subject to the following qualifications:

The description of the election as conducted by "secret ballot" (Bd. Br., p. 6) is inaccurate in view of the mailing of ballots to stewardesses, with a return date more than two weeks off, and without even so

much as a provision for a signature of the voter or any other provision aimed at assuring that the ballot was marked and returned by the hostess to whom it was mailed (J.A. 317, 320, 330-333). The Board's quotation of the election results (Bd. Br., p. 7) is hence meaningless.

Likewise the Board's characterization of authorization cars as "valid" and reference to the number signed by hostesses authorizing the Pilots to represent them, again begs the question at issue. The extent of hostess signing of cards in favor of representation by a pilot association in which the hostesses have neither membership nor any form of representation, rather indicates the extent to which pilots used their command authority over hostesses to assure that pilots would dictate the full employment relationship of hostesses without hostesses having any independent representation.[2]

The Board's description of the denial of a hearing as "a refusal to afford petitioner union a hearing in

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[2] The votes cast in the elections set forth in footnote 2, page 4 of our petition for writ of certiorari, reinforce our view that the election results in the instant case must be taken as evidencing manag ment coecion rather than free choice:

Name of Airline	National Mediation Board Case No.	Date of Election	Votes for Air Line Stewards and Stewardesses Association	Votes for Air Line Pilots Association	Number of Eligible Voters
Trans World Airlines	R-3511	12- 4-61	789	459	1,533
Eastern Air Lines	R-3507	10-12-61	788	62	1,349
Northwest Airlines	R-3454	7- 7-61	301	15	401
Northeast Airlines	R-3518	12-11-61	151	8	238
Western Air Lines	R-3498	8- 8-61	118	71	246
Pacific Air Lines	R-3508	11-17-61	23	1	46
Caribbean Atlantic	R-3499	7- 7-61	9	6	17

advance of its action" (Bd., Br., p. 7) suggests the incorrect inference that petitioner was afforded a hearing at some later date. At no time was petitioner afforded any hearing by the Board or the courts below on the disputed factual issues.

The briefs in opposition filed by the Pilots (Br., pp. 2-3) and by United (Br., pp. 2-3) seek to inject into this suit the facts respecting an abortive attempt by the Air Line Pilots Association to displace the duly elected officers of the Air Line Stewards and Stewardesses Association and replace them with the officers of the Air Line Pilots Association, on some theory that the Air Line Stewards and Stewardesses Association had in the past been a subsidiary or affiliate of the Pilots. The record before the National Mediation Board in this case on February 7, 1961, when the Board made the order here attacked, contained no mention of any factional strife within the Air Line Stewards and Stewardesses Association, nor any claim that the Air Line Pilots Association was seeking certification on some theory that it constituted some faction of a stewardesses organization.

This case was never presented to the National Mediation Board as a dispute between two factions of stewardesses. The case was presented to the National Mediation Board and was always treated by the National Mediation Board as an application of a pilots association to represent stewardesses who were already represented by the stewardesses union. The Air Line Pilots Association filed applications to represent stewardesses employed by Braniff and United which were at the time represented by the Air Line Stewards and Stewardesses Association (J.A. 4-5, 13, 14, 15; 17-45, 46-84). The applications made no mention of any

alleged schism within the Air Line Stewards and Stewardesses Association nor any claim that the Air Line Pilots Association claimed the Air Line Stewards and Stewardesses Association as its subordinate affiliate. The National Mediation Board notified Rowland K. Quinn, Jr., the duly elected president of the petitioner, of the filing of the applications and continued to deal with Quinn as the president of the incumbent union (J.A. 4-7, 13, 14, 97, 99).[3]

It was only after the petitioners filed the instant suit in the court below that the Pilots attempted to raise their view that somehow because some pilots had coerced some hostesses to take the view that pilots should represent hostesses, the pilots' claim of representation constituted a factional dispute within the Air Line Stewards and Stewardesses Association (J.A. 242-304). Since the district court dismissed the case for want of jurisdiction of the federal courts to review action by the National Mediation Board (J.A. 352-353), there was no occasion for the pleadings with respect to the alleged factional dispute to be completed. This whole alleged factional dispute is irrelevant in this case. If the Court is interested, however, the

[3] Not only in the representation cases here involved, namely the Braniff and United cases, but in all of the subsequent representation cases listed in footnote 2, *supra*, p. 10, the National Mediation Board has ruled that Rowland K. Quinn, Jr., and the other duly elected officers of the Air Line Stewards and Stewardesses Association would be recognized by the National Mediation Board as the legal officers of the Air Line Stewards and Stewardesses Association, and the dispute between the Air Line Pilots Association and the Air Line Stewards and Stewardesses Association would be treated as a dispute between two independent unions and not as a factional dispute between stewardesses. See decision dated July 20, 1961 in *Western Air Lines*, N. M. B. Case No. R-3498.

Pilots never received any of the relief for which they prayed (J.A. 265-266) in the complaint (J.A. 245-267) in the suit in the Circuit Court of Cook County to which the Pilots (pp. 2-3) and United (p. 2) in their briefs in opposition make reference and that complaint was dismissed by the Circuit Court of Cook County on June 12, 1961 for failure of the Pilots to comply with court orders requiring production of a list of the "executive active" members of the Air Line Pilots Association, that is members who occupied executive positions with air lines, and of the constitution and by-laws of the Air Line Pilots Association as amended November 24, 1960.

Hence there is no basis in the record for the portrayal to this Court by both United (Br., p. 3) and Pilots (Br., p. 3) of the petitioner as appearing before the National Mediation Board as "one of the two factions claiming to be" the true Air Line Stewards and Stewardesses Association. No one ever claimed before the National Mediation Board at any time prior to its order of February 7, 1961, that the Air Line Stewards and Stewardesses Association was not the whole organization which had previously over the years been certified and represented the hostesses on Braniff and United.

This very mimicking by United in its brief in opposition (p. 3) of the Pilot's claim that the petitioner is but one faction of the Air Line Stewards and Stewardesses Association, is a continuation by United of the role of support to the Pilots in their efforts to represent hostesses, which formed one of the bases for the allegations in the complaint here that United had interfered with, influenced and coerced hostesses to leave their own union and consent to representation by

the pilots (J.A. 9-40). As is set forth in the affidavits filed in the district court in support of a motion for preliminary injunction, when the Pilots in August 1960, attempted to take over the Stewardesses union, United at once ceased dealing with the Stewardesses union and began dealing with the Pilots as the representatives of the hostesses (J.A. 340-341). The assertion of United (Br., p. 4) that United's denial that its officials engaged in "any organizing activity among the stewardesses * * * has not been challenged," avoids the issue in that the challenging affidavit (J.A. 340-342) showed that the role of United's top management, although perhaps not "organizational" nevertheless constituted prohibited influence, interference and coercion.

Indeed, the extreme lengths to which top management of United has gone to support the cause of the Pilots is evident by the efforts of United to establish that its pilots have no supervision over stewards and stewardesses. Three days after the National Mediation Board ruled that the Air Line Pilots Association was not disqualified to represent stewards and stewardesses, R. F. Ahrens, Senior Vice President-Personnel of United, wrote the Board that "Pilots of United Air Lines do not act in a supervisory relationship to stewards or stewardesses" (J.A. 325-326). When this letter was attached to the Board's motion to dismiss in the district court (J.A. 321-326), petitioner filed pages from the United Pilots Manual and the United Stewardesses Manual bearing the instruction to pilots that they are "responsible" for "supervision of crew members" (J.A. 344, 346) and the instruction to stewardesses that "All Stewardesses and Flight Stewards are responsible to the Captain" (J.A.

344, 347). In reply, Charles M. Mason, Vice-President-Employee Relations of United (J.A. 305), explained these provisions in its manuals as merely issued to implement the Civil Air Regulations providing that the pilot must be in command of the crew, with full control and authority without limitation over all crew members and their duties (J.A. 308-309). Admittedly crew members as here used includes stewards and stewardesses (J.A. 308-309), and stewards and stewardesses spend more than 90 per cent of their working time on board planes under the direct command and control of pilots (J.A. 343).

United in its brief in opposition (p. 5) makes the point that the allegations of the complaint with respect to the managerial and supervisory status of the pilots were not verified, ignoring that affidavits filed in support of the motion for temporary restraining order and preliminary injunction fully support these allegations (J.A. 108-109, 237-238, 343-348).

REPLY TO RESPONDENTS' ARGUMENTS

The chief argument against review which has been advanced by the respondents (Bd. Br., pp. 9-13; United Br., pp. 8-9; Pilots Br., pp. 7-8), is that an allegedly "similar issue" was denied review by this Court on January 8, 1962, in *UNA Chapter, Flight Engineers' International Association* v. *National Mediation Board*, No. 531, and *WES Chapter, Flight Engineers' International Association* v. *National Mediation Board*, No. 540. These cases however, involved no issue as to the constitutional validity of a finding of a disputed fact without a hearing. The decisions by this Court upholding instances of administrative action as final have always clearly excepted from non-review-

ability all instances where the claim of illegality rests on constitutional grounds. See for example, *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297, 301, "all constitutional questions aside;" *Inland Empire District Council* v. *Millis*, 325 U.S. 697, 710, "no substantial question of due process is presented."

The brief in opposition filed by United relies heavily on the contention that the Board decided "no factual question" to argue that no constitutional issue exists here (United Br., p. 8). But the Board in its brief in opposition (p. 11) says it did base its ruling on its finding "as a fact that ALPA is not composed of persons who stand in the relation of the carrier or its officers to stewards and stewardesses."

The failure to accord a hearing before finding as to disputed facts cannot be excused by claims that the Board "is fully conversant with basic relationships in the airline industry" (Pilots Br., p. 7) or may take judicial notice of the pilots' alleged militancy on their own behalf (United Br., p. 9) or by the Board's alleged expertise (Bd. Br., p. 12). This Court has uniformly held that the constitutional requirement of due process of law could only be met by disclosure by the administrative agency of the evidence upon which it relied, with opportunity afforded to offer countervailing evidence. *Ohio Bell Telephone Co.* v. *Public Utilities Commission*, 301 U.S. 292, 300, 302, 304; *First Morgan Case* (*Morgan* v. *U. S.*), 298 U.S. 468, 480; *West Ohio Gas Co.* v. *Public Utilities Commission of Ohio*, 294 U.S. 63, 68-69, 71; *Bratton* v. *Chandler*, 260 U.S. 110, 114-115. The mere opportunity to file a written state-

ment does not suffice. *Londoner v. City and County of Denver*, 210 U.S. 373, 386.

Nor are we aware of any material which would afford any basis for the Board's taking judicial notice of the alleged non-managerial status of pilots. The only study we have been able to find of the relationship of the pilots to management is a doctoral thesis by Dr. John M. Baitsell of the Graduate School of Business Administration of Harvard University on Airline Industrial Relations, in Chapters 7 and 8 of which Dr. Baitsell concludes that airlines are dominated to an unique degree by their pilot groups.[1] The petitioner here has alleged and stands ready to prove that the Air Line Pilots Association is "composed of pilots many of whom occupy important management positions on commercial air carriers including but not limited to airline management positions such as president, vice president, high level positions in airline operations departments, chief pilots, assistant chief pilots, flight instructors and members of management committees which bargain with the Air Line Stewards and Stewardesses Association" (J.A. 3).

The fact that pilots are allowed to bargain on their own behalf and to be included in the same unit with copilots and flight engineers whom they supervise (Bd. Br., pp. 12-13; United Br., pp. 8-10; Pilots' Br., p. 7) in no wise establishes that pilots do not stand in the relationship of management to stewards and stewardesses. Pilots, copilots and flight engineers are all li-

[1] The thesis is scheduled for publication by the Wertheim Foundation, and in the meantime may be borrowed from the Baker Library at the Harvard School of Business Administration.

censed officers who each have command over the unlicensed crew members who serve under them (J.A. 103-104, 118-119).[7] No flight attendant is licensed. As a group pilots, copilots and flight engineers resemble the masters, mates and pilots on sea-going vessels, who for years have been organized into the International Organization of Masters, Mates and Pilots and bargain on their own behalf but who are at the same time concededly management as to the unlicensed personnel serving under them and ineligible to serve as bargaining representatives of the unlicensed personnel. *Virginia Ferry Corp.* v. *N.L.R.B.*, 4th Cir., 1939, 101 F. 2d 103, 105-106; *N.L.R.B.* v *Delaware New Jersey Ferry Corp.*, 3rd Cir., 1942, 128 F. 2d 130, 137.

The wide disparity between pilots and stewardesses is apparent from the fact that a pilot on a jet airplane has an annual salary of from $30,000 to $33,000 a year, whereas the average annual wage of the stewardesses on United and Braniff is less than $4,000 a year (J.A. 18, 50, 87, 93, 104, 240, 241). Pilots have a stable career whereas the turnover rate among stewardesses is between 40 and 60 per cent per year (J.A. 87).[8]

The argument that the public will be injured by the delay necessarily attendant upon judicial review of Board action (United Br., p. 11), merits no considera-

[7] U. S. Dept. of Labor, Bureau of Labor Statistics, Bulletin No. 1235-62, Employment Outlook for Pilots, Stewardesses and Other Air Transport Occupations, 1959, p. 473; Arthur M. Wiseheart, The Airlines-Recent Experience under the Railway Labor Act, 25 Law and Contem. Prob. 22, 24 (Winter, 1960).

[8] U. S. Dept. of Labor, Bureau of Labor Statistics, Bulletin No. 1235-62, *op. cit.*, pp. 472-473, 476.

tion when as here speed is based on a denial of due process.

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APPENDIX A

Administrative Regulations Involved

The relevant provisions of the Rules and Regulations of the National Mediation Board, as amended April 13, 1954 (29 C.F.R. 1201.1, *et seq.*) are as follows:

"§ 1202.3 *Representation disputes.* If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of the Railway Labor Act, it is the duty of the Board, upon request of either party to the dispute, to investigate such dispute and certify to both parties, in writing, the name or names of individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and to certify the same to the carrier.

"§ 1202.4 *Secret ballot.* In conducting such investigation, the Board is authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier.

"§ 1202.5 *Rules to govern elections.* In the conduct of a representation election, the Board shall designate who may participate in the election, which may include a public hearing on craft or class, and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within 10 days designate the employees who may participate in the election.

"§ 1202.6 *Access to carrier records.* Under the Railway Labor Act the Board has access to and has power to make copies of the books and records of the

carriers to obtain and utilize such information as may be necessary to fulfill its duties with respect to representative of carrier employees.

"§ 1202.7 *Who may participate in elections.* As mentioned in § 1202.3, when disputes arise between parties to a representation dispute, the National Mediation Board is authorized by the act to determine who may participate in the selection of employees representatives.

"§ 1202.8 *Hearings on craft or class.* In the event the contesting parties or organizations are unable to agree on the employees eligible to participate in the selection of representatives, and either party makes application by letter for a formal hearing before the Board to determine the dispute, the Board may in its discretion hold a public hearing, at which all parties interested may present their contentions and argument, and at which the carrier concerned is usually invited to present factual information. At the conclusion of such hearings the Board customarily invites all interested parties to submit briefs supporting their views, and after considering the evidence and briefs, the Board makes a determination or finding, specifying the craft or class of employees eligible to participate in the designation of representatives."